



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC065]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Punta Gorda Lighthouse Stabilization Project in Humboldt County, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization (IHA).

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an IHA to the Bureau of Land Management (BLM) to incidentally harass marine mammals during construction activities associated with the Punta Gorda Lighthouse (PGL) Stabilization Project in Humboldt County, California. There are no changes from the proposed authorization in this final authorization.

DATES: This Authorization is effective from June 1, 2022 through October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

Summary of Request

On August 30, 2021, NMFS received a request from the BLM for an IHA to take marine mammals incidental to the PGL Stabilization Project in Humboldt County, California. The application was deemed adequate and complete on February 15, 2022. The BLM’s request is for take of a small number of northern elephant seals (*Mirounga angustirostris*), Pacific harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), and Steller sea lions (*Eumetopias jubatus*) by Level B

harassment only. Neither the BLM nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

There are no changes from the proposed IHA to the final IHA.

Description of Planned Activity

Overview

The PGL was established as an aid to navigation in 1912 along the northern California coast. While in use, the lighthouse station included the lighthouse, oil house, three residences, and numerous other small buildings typical of small military outposts. Although the lighthouse is located on the mainland, maintaining the station in the remote and rugged location along the coast proved to be too difficult and the U.S. Coast Guard decommissioned the lighthouse in 1951. The BLM assumed management of the site following the PGL's decommission but was unable to keep up with the maintenance and after the windy ocean environment took a toll on the site, the BLM intentionally burned down the wooden structures of the station. The concrete lighthouse and oil house were all that remained when the site was listed in the National Registry of Historic Places in 1976.

The BLM plans to stabilize the lighthouse site, repair the remaining structures, and rebuild former structures between June 1, 2022 and October 1, 2022 on up to 122 days of work. The lighthouse is located along the Lost Coast Trail, which extends from the Mattole River to Shelter Cove, California, covering approximately 40 kilometers (km) (24.8 miles (mi)). The BLM will access the PGL by traveling along the coast from the north, originating at either the Windy Point Trailhead or the Trailhead at the Mattole Campground.

A detailed description of the planned construction activities at the PGL is provided in the **Federal Register** notice of the proposed IHA (87 FR 24517; April 26, 2022). Since that time, no changes have been made to the project activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for

the description of the specified activities. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see **Mitigation** and **Monitoring and Reporting** sections).

Comments and Responses

A notice of NMFS' proposal to issue an IHA to the BLM was published in the **Federal Register** on April 26, 2022 (87 FR 24517). That notice described, in detail, the BLM's activities, the marine mammal species that may be affected by the activities, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. This proposed notice was available for a 30-day public comment period.

During the public comment period, NMFS received no public comments.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>).

Table 1 lists all species or stocks for which take is expected and authorized for the BLM's activities, and summarizes information related to the population or stock,

including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific and Alaska SARs. All values presented in Table 1 are the most recent available at the time of publication and are available in the 2020 SARs (Carretta *et al.*, 2021; Muto *et al.*, 2021) and draft 2021 SARs (available online at:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports>).

Table 1. Species Likely Impacted by the Specified Activities

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Carnivora – Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
Steller Sea Lion	<i>Eumetopias jubatus</i>	Eastern U.S.	-, -, N	43,201 (see SAR, 43,201, 2017)	2,592	112

California Sea Lion	<i>Zalophus californianus</i>	U.S.	-, -, N	257,606 (N/A, 233,515, 2014)	14,011	>320
Family Phocidae (earless seals)						
Northern Elephant Seal	<i>Mirounga angustirostris</i>	California Breeding	-, -, N	187,386 (N/A, 85,369, 2013)	5,122	13.7
Harbor Seal	<i>Phoca vitulina</i>	California	-, -, N	30,968 (N/A, 27,348, 2012)	1,641	43

¹ Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

³ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, all four species (with four managed stocks) in Table 1

temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur.

A detailed description of the species likely to be affected by the BLM's activities, including information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHAs (87 FR 24517; April 26, 2022). Since that time, we are not aware of any changes in this information or the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for those descriptions. Please also refer to NMFS's website (<https://www.fisheries.noaa.gov/find-species>) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and their Habitat

Acoustic and visual stimuli generated by personnel working at the PGL and traversing the beach to access the work site, noise from construction equipment operating at the PGL, and helicopters hovering over the site to transport equipment and supplies may have the potential to cause behavioral disturbance (Level B harassment) of marine

mammals in the vicinity of the project area. The **Federal Register** notice of proposed IHA (87 FR 24517; April 26, 2022) included a discussion of the effects of anthropogenic activity on marine mammals and their habitat. That information and analysis is incorporated by reference into the final determination for the IHA and is not repeated here; please refer to the notice of proposed IHA (87 FR 24517; April 26, 2022).

The **Estimated Take** section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The **Negligible Impact Analysis and Determination** section considers the content of this section, the **Estimated Take** section, and the **Mitigation** section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of "small numbers" and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes are by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to

construction personnel and equipment, including helicopters used to transport materials. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized. For the BLM's planned activities, behavioral (Level B) harassment is limited to movement and flushing, defined by the disturbance scale of pinniped responses to in-air sources to determine take.

The presence of construction personnel may have the potential to cause Level B harassment of marine mammals hauled-out at the PGL and along the planned access routes. Disturbance includes a variety of effects, from subtle to conspicuous changes in behavior, movement, and displacement. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of the BLM's construction personnel (*e.g.*, turning the head, assuming a more upright posture) to flushing from the haulout site into the water. NMFS does not consider the lesser reactions to constitute behavioral harassment, or Level B harassment takes, but rather assumes that pinnipeds that move greater than two body lengths or longer, or if already moving, a change of direction of greater than 90 degrees in response to the disturbance, or pinnipeds that flush into the water, are behaviorally harassed, and thus considered incidentally taken by Level B harassment. NMFS uses a 3-point scale (Table 2) to determine which disturbance reactions constitute take under the MMPA. Levels 2 and 3 (movement and flush) are considered take, whereas level 1 (alert) is not. Animals that respond to the presence of BLM personnel by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment.

Table 2. Disturbance Scale of Pinniped Responses to In-Air Sources to Determine Take

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.

2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

* Only Levels 2 and 3 are considered take under the MMPA, whereas Level 1 is not.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the authorized take numbers are calculated.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information, that will inform the take calculations.

Researchers from Humboldt State University (HSU) regularly conduct census counts of pinnipeds at the PGL and surrounding areas along the northern California coast (e.g., Goley *et al.*, 2021). Counts of northern elephant seals and harbor seals at the PGL during the effective dates of the IHA (June 1 through October 1) are presented below.

Table 3. Northern Elephant Seal Census Counts

2019 Counts		2020 Counts	
Date	Number of seals observed	Date	Number of seals observed
June 8	101	June 4	177
June 15	74	June 11	83
June 23	34	June 14	80
July 7	40	June 24	37
July 14	50	June 27	38
July 21	54	July 4	36
August 3	39	July 12	39
August 21	44	July 16	38
August 31	62	July 24	36
September 15	162	July 30	38
September 27	244	August 6	32
		August 9	28
		August 13	28
		August 20	27
		August 27	33
		August 30	48
		September 5	60
		September 19	133
		September 27	177

The average daily count of elephant seals at the PGL during the effective dates of the IHA (June 1 through October 1) was 82.2 in 2019 and 61.5 in 2020. Across both years, the average daily count was 69.1 elephant seals (Goley *et al.*, 2021). A large portion of the elephant seals present at the PGL are uniquely tagged and dye stamped to identify individuals, and the same individuals were identified at the PGL haulout on multiple days.

Table 4. Harbor Seal Census Counts

2019 Counts		2020 Counts	
Date	Number of seals observed	Date	Number of seals observed
June 8	51	June 14	55
June 15	107	June 27	77
June 23	81	July 12	90
July 7	116	July 24	123
July 14	180	August 9	73
July 21	123	August 30	36
August 3	105	September 5	38
August 21	80	September 19	51
August 31	22	September 27	53
September 15	22		
September 27	28		

The average daily count of harbor seals at the PGL during the effective dates of the IHA (June 1 through October 1) was 83.2 in 2019 and 66.2 in 2020. Across both years, the average daily count was 75.55 harbor seals (Goley *et al.*, 2021). The harbor seals present at the PGL are not tagged or otherwise clearly identifiable, but since harbor seals typically show high philopatry (*e.g.*, Waring *et al.*, 2016; Wood *et al.*, 2011), researchers from HSU hypothesize that the harbor seal colony at the PGL is made up of the same individuals that move between Punta Gorda and other nearby haulouts.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and has been authorized.

To estimate the total number of northern elephant seals and harbor seals that may be present at the PGL and subject to behavioral disturbance from the PGL stabilization project, the BLM multiplied the daily count of each species averaged across the two years of census data (69.1 elephant seals and 75.55 harbor seals) by the maximum days of work at the PGL (122 days), for a total estimate of 8,431 northern elephant seals and 9,218 harbor seals taken by Level B harassment. This estimation assumes that all animals present would exhibit behavioral responses that are considered take (Levels 2 and 3 as described in Table 2). As described above, many of the seals present at the PGL are suspected or confirmed to be present across multiple days. Therefore, the above estimated take numbers are considered to represent instances of take, not necessarily the number of individual seals that may be taken.

California sea lions and Steller sea lions have not been observed hauled-out at the PGL, but have been observed in the water near the PGL and at nearby haulouts along the Lost Coast Trail. The BLM assumes that no more than 5 individual California sea lions and Steller sea lions may haul-out at the PGL or along the access route and be taken by Level B harassment.

Table 5. Authorized Take by Level B Harassment by Species and Percentage of Each Stock Affected

Species	Stock	Authorized Take by Level B Harassment	Stock Abundance	Percent of Stock
Northern elephant seal	California breeding	8,431 ^a	187,386	4.5
Pacific harbor seal	California	9,218 ^a	30,968	29.8
California sea lion	U.S.	5	257,606	< 0.01
Steller sea lion	Eastern U.S.	5	43,201	0.01

^a The authorized take represents the estimated number of instances of take, which does not necessarily equate to the number of individuals that may be taken.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

The following mitigation measures are required:

The work season has been planned to reduce the level of impact on elephant and harbor seals. The effective dates of the IHA (June 1, 2022 through October 1, 2022) occurs when the elephant seal population is at its lowest and any harbor seal pups that may be on site would be old enough to be self-sufficient if the colony temporarily flushes into the water. No elephant seal pups will be present during the work season.

Whenever possible, the BLM must utilize the access route that begins at the Windy Point Trailhead, rather than the route that begins at the Mattole Campground, as that route requires a longer stretch of driving on the beach or marine terrace (approximately 5 km (3.1 mi)) where harbor seals are more likely to be hauled-out. The preferred route from the Windy Point Trailhead requires only 1.25 km (0.78 mi) of driving on the beach and marine terrace. Utilizing the access route with the shortest amount of driving on the beach and marine terrace is expected to reduce the number of marine mammals that may be encountered and disturbed along the access route and minimize the impact of the vehicles on marine mammal habitat.

To the extent possible, the BLM must limit the daily number of vehicle trips between the project area and the contractor's offshore camp where additional tools and supplies would be stored in trailers or other storage containers. Additionally, to the extent possible, the BLM must utilize helicopters to deliver construction equipment to the PGL work site to reduce the number of vehicle trips that would be necessary to conduct the planned activities.

While accessing the project site, at least one trained protected species observer (PSO) must monitor ahead of the vehicle(s) path, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation (*e.g.*, change of course, slow down) is required. Vehicles must not approach within 20 m (65.6 ft) of marine mammals. If animals remain in the access path with no possible route to go around and maintain 20 m (65.6 ft) separation, personnel may exit the vehicle(s) to walk toward

animals and intentionally flush them into the water to allow the vehicle(s) to proceed. To the extent possible, if multiple vehicles are traveling to the site, they must travel in a convoy such that animals are not potentially harassed more than once while the vehicles pass.

A fence must be erected to keep elephant seals from entering the construction area to limit disturbance and prevent accidental injury from vehicles and construction debris.

All helicopters associated with the project must slowly approach the work site and allow all marine mammals present to flush into the water before setting any hauled materials down on the ground.

The BLM must cease or delay visits to the project site if a species for which the number of takes that have been authorized for a species are met, or if a species for which takes were not authorized, is observed (*e.g.*, northern fur seals (*Callorhinus ursinus*) or Guadalupe fur seals (*Arctocephalus townsendi*)).

The BLM must monitor for offshore predators and must not approach hauled-out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are observed. If the BLM and/or its designees see pinniped predators in the area, they must not disturb the pinnipeds until the area is free of predators.

Based on our evaluation of the applicant's proposed measures, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the

necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

At least one NMFS-approved PSO must travel to and from the construction site ahead of the work crew each day and serve as a lead monitor to record incidental take.

PSOs will consist of BLM wildlife biologists, biological technicians, and interns, as well as King Range National Conservation Area staff. At least one PSO must monitor the beach surrounding the PGL during all construction activities.

PSOs must be approved by NMFS prior to beginning any activity subject to the IHA. PSOs must have the following qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

PSOs must record the following information for each day of work:

- Date, time, and access route of each visit to the work site;
- Information on the weather, including tidal state and estimated horizontal visibility;
- Composition of marine mammals observed, such as species, sex, and life history stage (*e.g.*, adult, sub-adult, pup);

- The numbers (by species) of marine mammals observed during the activities;
- Estimated number of marine mammals (by species) that may have been harassed during the activities;
- Marine mammal disturbances according to a three-point scale of intensity (see Table 2);
- Behavioral responses or modifications of behaviors that may be attributed to the specific activities, a description of the specific activities occurring during that time (e.g., pedestrian, vehicle, or helicopter approach), and any mitigation action taken; and
- If applicable, note the presence of any offshore predators (date, time, number, and species) and any mitigation action taken.

Reporting

The BLM must report all observations of marked or tag-bearing pinnipeds or carcasses and unusual behaviors, distributions, or numbers of pinnipeds to the NMFS West Coast Regional Office.

A draft marine mammal monitoring report must be submitted to NMFS within 90 days after the completion of each work season, or 60 days prior to the requested issuance date of any future IHAs for projects at the same location, whichever comes first. A final report must be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS on the draft report, the draft report will be considered the final report. All draft and final monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Fowler@noaa.gov*.

In addition to raw sightings data, the report must include:

- A summary of the dates, times, site access route, and weather during all construction activities;

- The numbers (by species) of marine mammals observed during the activities, by age and sex, if possible;
- The estimated number of marine mammals (by species) that may have been harassed during the activities based on the three-point disturbance scale (Table 2);
- Any behavioral responses or modifications of behaviors that may be attributed to the specific activities (*e.g.*, flushing into the water, becoming alert and moving, rafting); and
- A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

Reporting Injured or Dead Marine Mammals

In the event that the BLM or any other personnel involved in the activities discover an injured or dead marine mammal, the BLM must report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov* and *ITP.Fowler@noaa.gov*), NMFS (301-427-8401) and to the West Coast Regional Stranding Coordinator (866-767-6114) as soon as feasible. If the death or injury was clearly caused by the specified activity, the BLM must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The BLM must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);

- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’ implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 5, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks

that would lead to a different analysis for this activity. Activities associated with the PGL stabilization project, as described previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) from in-air sounds and visual disturbance. Potential takes could occur if individual marine mammals are present nearby when activity is happening.

No injuries or mortalities are anticipated to occur as a result of the PGL stabilization project and none are authorized. The risk of marine mammal injury, serious injury, or mortality associated with the planned construction project increases somewhat if disturbances occur during pupping season. These situations present increased potential for mothers and dependent pups to become separated and, if separated pairs do not quickly reunite, the risk of mortality to pups (*e.g.*, through starvation) may increase. Separately, adult male elephant seals may trample elephant seal pups if disturbed, which could potentially result in the injury, serious injury, or mortality of the pups. However, the planned activities will occur outside of the elephant seal pupping season, therefore no elephant seal pups are expected to be present. Although the timing of the planned activities partially overlaps with harbor seal pupping season, the PGL is not a harbor seal rookery and few pups are anticipated to be encountered during the planned activities. Harbor seals are very precocious with only a short period of time in which separation of a mother from a pup could occur. The planned activities will occur late enough in the pupping season that any harbor seal pups present will likely be old enough to keep up with their mother in unlikely event of a stampede or other flushing event. The required mitigation measures (*i.e.*, minimum separation distance, slow approaches, and minimizing vehicle trips to the PGL) generally preclude the possibility of behaviors, such as stampeding, that could result in extended separation of mothers and dependent pups or trampling of pups.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as alerts or movements away from the lighthouse structure, including flushing into the water. Most likely, individuals will simply move away from the acoustic or visual stimulus and be temporarily displaced from the areas.

Monitoring reports from similar activities (*e.g.*, Point Blue Conservation Science, 2020; University of California Santa Cruz Partnership for Interdisciplinary Studies of Coastal Oceans, 2021) have reported no apparently consequential behavioral reactions or long-term effects on marine mammal populations as noted above. Repeated exposures of individuals to relatively low levels of sound and visual disturbance outside of preferred habitat areas are unlikely to significantly disrupt critical behaviors or result in permanent abandonment of the haulout site. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound and visual disturbance produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring.

Of the marine mammal species anticipated to occur in the planned activity areas, none are listed under the ESA and there are no known areas of biological importance in the project area. Taking into account the planned mitigation measures, effects to marine mammals are generally expected to be restricted to short-term changes in behavior or temporary displacement from haulout sites. The Lost Coast area has abundant haulout areas for pinnipeds to temporarily relocate, and marine mammals are expected to return to the area shortly after activities cease. No adverse effects to prey species are anticipated as no work would occur in-water, and habitat impacts are limited and highly localized,

consisting of construction work at the existing lighthouse station and the transit of vehicles and equipment along the access route. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required mitigation and monitoring measures, NMFS finds that the total marine mammal take from the BLM's PGL stabilization project will not adversely affect annual rates of recruitment or survival and, therefore, will have a negligible impact on the affected species or stocks.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury, mortality, or Level A harassment is anticipated or authorized;
- Few pups are expected to be disturbed, and would not be abandoned or otherwise harmed by other seals flushing from the area;
- Effects of the activities would be limited to short-term, localized behavioral changes;
- Marine mammals are expected to return to normal behavior during gaps in construction activity such that any behavioral effects of repeated exposures are not expected to negatively affect survival or reproductive success of any individuals or stock;
- Nominal impacts to pinniped habitat are anticipated;
- No biologically important areas have been identified in the project area;
- There is abundant suitable habitat nearby for marine mammals to temporarily relocate; and

- Mitigation measures are anticipated to be effective in minimizing the number and severity of takes by Level B harassment, which are expected to be of short duration.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the BLM's planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS has authorized is below one-third of the estimated stock abundance of all species (in fact, take of individuals is less than 5 percent of the abundance of all of the affected stocks except Pacific harbor seals, see Table 5). This is likely a conservative estimate because it assumes all takes are of different individual animals, which is likely not the case. Using tags and dye stamps, researchers from HSU have identified individual northern elephant seals across several days of monitoring at the PGL. Although harbor seals observed at the PGL are not typically tagged or marked,

HSU researchers suggest that the harbor seals seen hauled-out at the PGL are likely the same individuals that move between Punta Gorda and other nearby haulouts. Therefore, many individuals that may be taken by Level B harassment are likely to be the same across consecutive days, but PSOs would count them as separate takes across days.

Based on the analysis contained herein of the planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the West Coast Regional Office.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Authorization

As a result of these determinations, NMFS has issued an IHA to the BLM for conducting the PGL stabilization project in Humboldt County, California (effective from June 1, 2022 through October 1, 2022), with the previously discussed mitigation, monitoring, and reporting requirements incorporated.

Dated: June 2, 2022.

Catherine Marzin,

Acting Director, Office of Protected Resources,

National Marine Fisheries Service.